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***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

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In re application of: Bruzzese et al.

Attorney Docket No.: IGT1P145/P000267-038

Application No.: 10/817,156

Examiner: Adetokunbo Olusegun Torimiro

Filed: April 2, 2004

Group: 3714

Title: GAMING MACHINE  
COMMUNICATING SYSTEM

Confirmation No.: 1189

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I hereby certify that this correspondence is being transmitted electronically through EFS-WEB to the Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on April 28, 2010.

Signed: \_\_\_\_\_/Roger S. Sampson/  
Roger S. Sampson

**Pre-Appeal Brief Request for Review**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants respectfully request review of the final rejection in the above-identified patent application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal.

Claims 1-4, 7-13, 15, 17, and 19-34 were rejected under 35 U.S.C. § 103(a) as obvious in view of Wells et al., U.S. Patent No. 6,488,585 (hereinafter “Wells”), Simon et al., U.S. Patent Pub. No. 2003/0087652 (hereinafter “Simon”), Baldwin, U.S. Patent No. 6,732,195 (hereinafter “Baldwin”), and Carlson, U.S. Patent 7,260,834 (hereinafter “Carlson”). Claims 5 and 6 were rejected under 35 U.S.C. § 103(a) as obvious in view of Wells, Simon, Baldwin, Carlson, and Itkis, U.S. Patent No. 4,856,787 (hereinafter “Itkis”). Claims 14 and 16 were rejected under 35 U.S.C. § 103(a) as obvious in view of Wells, Simon, Baldwin, Carlson, and Jorasch et al., U.S. 6,379,248 (hereinafter “Jorasch”). Applicants respectfully traverse these rejections.

***Simon Does Not Disclose a Transponder Capable of Making a Prediction Regarding the Financial Performance of a Game***

Wells and Baldwin are not cited in the Office Action as disclosing any prediction of performance. However, Simon is cited as allegedly disclosing “a transponder” “capable of making a prediction regarding performance of a game.” (Office Action, page 3, lines 10-12).

As a threshold matter, the Office Action incorrectly maps the functionality of devices in the prior art with features of the claims. For example, the claimed transponder is not a device for playing games, but is instead a separate device configured to communicate with “selected gaming machines.” and to “make a prediction regarding performance of at least one new game to replace a current game of said one or more gaming machines.” Claim 1, for example, recites that the transponder is operable to “make a prediction regarding performance,” *the performance comprising “a ratio of coin-in to a unit of time,”* of “at least one new game to replace a current game of said one or more gaming machines.”

However, the handheld devices described in Simon are portable gaming devices for playing games, such as a Nintendo Game Boy. (¶ [0005]-[0006]). The portable gaming devices described in Simon are not configured to make predictions regarding the financial performance of any other device. The portable gaming devices described in Simon, as understood, are not configured for wager gaming and do not accept coins. Accordingly, a prediction of performance “comprising a ratio of coin-in to a unit of time” cannot be made for such devices.

The passages of Simon cited in the Office Action are reproduced below:

[0074] Preferably, the portable communications device includes a 32 bit processor and is game predictive performance-capable to minimize high-latency impact. The portable communications device 200 may be provided with sufficient bits of RAM so as to be capable of storing at least five (5) games in addition to normal communications applications, and sufficient bits of ROM to provide adequate memory for custom configuration. The portable communications device 200 may also include memory back-up capabilities. The telephone device 200 battery should provide at least six (6) hours use time in communications mode and be rechargeable.

[0075] The portable communications device 200 preferably may be capable of communication using IS-95 A with packet data. The portable communications device 200 has the capability of being remotely provisioned by the network provider.

Paragraph [0074] appears to be the only passage of Simon in which prediction of performance is mentioned. Thus, Simon provides little detail regarding what measure of performance is predicted or how that prediction is accomplished. (¶ [0074]). The cited passages relate to predicting the technical performance of the game and in particular to “minimize[ing] high latency impact.” Latency is a measure of time delay experienced in a system and has nothing whatsoever to do with financial performance. Indeed, Simon makes no mention of any wager-based games at all. Instead, Simon describes techniques for facilitating interaction between users of wireless gaming devices such as Nintendo Game Boys. (¶ [0001], [0005]).

Making a prediction of *technical* performance of a game played on a Game Boy or other wireless entertainment device is entirely unrelated to predicting the *financial* performance of a game, which may depend on factors such as the location of the gaming machine in the casino, the day of the week, the time of year, the demographics of casino players, past financial performance, and other information available to a casino. (Application as filed, ¶ [0043]-[0045]). Therefore, Simon fails to disclose or suggest making any prediction of coin-in to a unit of time of a new game to replace an existing game, as recited in claim 1.

### ***Carlson Fails to Disclose or Suggest Any Prediction of Performance***

The Examiner seems to agree that Wells, Baldwin, and Simon (considered alone or in combination) are deficient with regard to predicting the financial performance of another device, since the Office Action cites Carlson as disclosing the monitoring of financial profitability of gaming machines. (Page 4, lines 1-15). However, Carlson fails to disclose or suggest any prediction of performance, much less the prediction of financial performance of an existing game to replace a new game.

Instead, Carlson describes techniques for securely communicating and authenticating gaming communications to protect against misuse or tampering or to facilitate remote game play. (Col. 1, line 17 through col. 2, line 38). It is entirely irrelevant that some of the communicated information may include “financial information.” (Col. 1, lines 27-28). Carlson fails to disclose or suggest making *any* prediction of performance of a game. Indeed, Applicants’ attorney can find no mention of the words “coin,” “predict,” and “prediction” anywhere in Carlson. Moreover, Carlson provides no details regarding what types of financial information might be transmitted or how that financial information might be used to predict the performance of a

game. Therefore, Carlson fails to disclose or suggest making any prediction of coin-in to a unit of time of a new game to replace an existing game, as recited in claim 1.

***The Combination of References Does Not Disclose a Transponder Capable of Making a Prediction Regarding the Financial Performance of a Game***

Claim 1 recites “a hand held portable transponder” operable to “make a prediction regarding performance of at least one new game to replace a current game” where the predicted performance comprises “a ratio of coin-in to a unit of time.” Carlson fails to disclose or suggest making any such prediction of financial performance of a game. Simon has nothing to do with making a prediction of financial performance of a game. Wells and Baldwin are not cited as disclosing or suggesting any such features. Accordingly, even if the cited references could be combined as suggested in the Office Action, which applicants do not admit, the combination would still fail to teach a hand held portable transponder operable to make a prediction of financial performance (e.g., coin-in to a unit of time) of a new game to replace an existing game, as recited in claim 1.

Itkis and Jorasch are not cited in any rejection of an independent claim and, therefore, are not discussed herein.

As discussed herein, independent claims 20, 24, and 27-29 each recite features related to predicting financial performance that are similar to those recited in claim 1. Thus, it is respectfully submitted that claims 20, 24, and 27-29 are not obvious for at least the same reasons as claim 1. The dependent claims include, by virtue of their dependency, the features of the independent claims on which they are based and, therefore, are not obvious for at least the same reasons as their respective dependent claims.

Therefore, it is respectfully submitted that the rejections to all pending claims under 35 U.S.C. § 103(a) should be withdrawn.

### **CONCLUSION**

Applicants believe that all pending claims are allowable and respectfully request a Notice of Allowance for this application from the Examiner.

The Commissioner is hereby authorized to charge any additional fees, including any extension fees, which may be required or credit any overpayment directly to the account of the undersigned, No. 50-4480 (Order No. IGT1P145).

Respectfully submitted,  
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